

A Pegasus Engineers Sdn Bhd v Sambu (M) Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-02-816
OF 1996

NH CHAN, ABU MANSOR AND HAIDAR JJCA

15 JULY 1998

B

Civil Procedure — Striking out — Statement of claim — Application under O 18 r 19 of the Rules of the High Court 1980 and court's inherent jurisdiction — Application dismissed by senior assistant registrar and judge — Liberty to file afresh — Whether appellant should have filed fresh application or appealed

C

In the court below, the appellant had applied to have the indorsement on the writ and the statement of claim against it struck out under O 18 r 19(1) of the Rules of the High Court 1980 and the inherent jurisdiction of the court. Between ground (a) and ground (b) in the appellant's summons, it had interpolated the words 'and/or'. The respondent objected to the use of the conjunction 'and' between ground (a) and ground (b) in the summons as it meant that the supporting affidavit was being used even for ground (a) where no affidavit evidence was admissible. Both the senior assistant registrar and the judge below upheld the objection and the appellant's summons was struck off with liberty given to the appellant to file afresh. The appellant appealed against this decision.

D

E

Held, dismissing the appeal:

The whole process of appealing to this court in a matter such as this was trifling. In effect, all that the appellant had to do was to file his summons again and by then he should be wary of using the offending cumulative word 'and' between ground (a) and ground (b) in his summons, instead of wasting time and money on an appeal. The de minimis principle would therefore apply here (see p 131E-G).

F

G

[Bahasa Malaysia summary]

Di mahkamah bawah, perayu telah memohon supaya pengindorsan pada writ dan pernyataan tuntutan terhadapnya dibatalkan di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980 dan bidang kuasa sedia ada mahkamah. Di antara alasan (a) dan alasan (b) dalam saman perayu, ia telah menyisipkan perkataan-perkataan 'dan/atau'. Penentang membantah terhadap penggunaan kata penghubung 'dan' di antara alasan (a) dan alasan (b) dalam saman kerana ia bermakna bahawa affidavit menyokong digunakan walaupun untuk alasan (a) di mana tiada keterangan affidavit boleh diterima. Kedua-dua penolong kanan pendaftar dan hakim membenarkan bantahan dan saman perayu dibatalkan dengan kebebasan diberikan kepada perayu untuk memfailkan semula. Perayu membuat rayuan terhadap keputusan ini.

H

I

Diputuskan, menolak rayuan:

Keseluruhan proses merayu kepada mahkamah ini dalam perkara sedemikian adalah remeh-temeh. Sebenarnya, apa yang perlu dilakukan oleh perayu adalah untuk memfailkan samannya sekali lagi dan selepas itu berwaspada dalam menggunakan perkataan kumulatif 'dan' di antara alasan (a) dan alasan (b) dalam samannya, dan bukannya membuang masa dan wang pada suatu rayuan. Dengan itu, prinsip de minimis terpakai di sini (lihat ms 131E-G).]

Notes

For a case on striking out statement of claim, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 4340.

Case referred to

National Assurance and Investment Association, Re; Re Cross (1872) 7 Ch App 221 (refd)

Legislation referred to

Rules of the High Court 1980 O 18 r 19

Appeal from: Civil Suit No 22-284 of 1995 (High Court, Johor Bahru)

Lee Ting Kiat (Andrew Wong & Co) for the appellant.
Jagjit Singh (Jagjit Singh & Co) for the respondent.

NH Chan J (delivering judgment of the court): In the court below, the appellant (the second defendant) applied to have the indorsement on the writ and the statement of claim against the appellant struck out under O 18 r 19(1) of the Rules of the High Court 1980 and the inherent jurisdiction of the court. This was refused with liberty to file afresh by the senior assistant registrar who was affirmed by the judge below. Hence, the appeal to this court.

Order 18 r 19(1) provides:

- (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement, of any writ in the action, or anything in any pleading or in the indorsement, on the ground that —
 - (a) it discloses no reasonable cause of action or defence, as the case may be; or
 - (b) it is scandalous, frivolous or vexatious; or
 - (c) it may prejudice, embarrass or delay the fair trial of the action; or
 - (d) it is otherwise an abuse of the process of the Court;
 and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

- A (2) No evidence shall be admissible on an application under paragraph (1)(a).

In addition, the court has power under its inherent jurisdiction to strike out any pleading or indorsement which is an abuse of the process of the court. Where the application is simply on the ground that the pleading discloses no reasonable cause of action or defence, no affidavit evidence is admissible (O 18 r 19(2)); otherwise, a summons under this rule is generally supported by an affidavit, especially where, as is generally the case, the summons seeks an order under the inherent jurisdiction of the court as well as under this rule (*Chitty & Jacob's Queen's Bench Forms*, 1986 (21st Ed) at p 233).

- C The appellant in his summons relied on all the grounds under r 19(1), namely, grounds (a), (b), (c) and (d) as well as an additional ground (e) under the inherent jurisdiction of the court. The summons also declared that it was supported by the affidavit of Chang Fok Chin. Between ground (a) and ground (b) in the summons, the appellant had interpolated the words 'and/or'. The respondent took exception to this because of the use of the conjunction 'and' between ground (a) and ground (b) in the summons as that would mean that the supporting affidavit was being used even for ground (a) where no affidavit evidence was admissible (O 18 r 19(2)). Both the senior assistant registrar and the judge below upheld the objection and the appellant's summons was struck off with liberty given to the appellant to file afresh. In effect, all that the appellant had to do at the time was to file his summons again and by then he should be wary of using the offending cumulative word 'and' between ground (a) and ground (b) in his summons under O 18 r 19(1).
- D
- E

- F We consider the whole process of appealing to the Court of Appeal for so trifling a matter as the nature of this appeal de minimis non curat lex (see *Re National Assurance and Investment Association, Re Cross* (1872) 7 Ch App 221). It is unfortunate that the appellant had saddled itself with an unproductive course when another was equally advantageous to it. Instead of wasting time and expending so much money on an appeal to this court, the appellant could have made his application afresh, thus saving much time and costs. We think that the de minimis principle would apply here. The appeal must be dismissed with costs.
- G

Appeal dismissed.

H

Reported by David Lai

I